

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

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|--------------------------|---|----------------------|
| UNITED STATES OF AMERICA |) | |
| |) | |
| v. |) | Criminal Nos. 00-121 |
| |) | 01-101 |
| JERMAINE BROWN |) | |

**MOTION FOR REDUCTION OF SENTENCE PURSUANT
TO 18 U.S.C. § 3582(c)(2) WITH CITATION OF AUTHORITY**

The defendant, Jermaine Brown, by his attorney, Jay J. Finkelstein, Assistant Federal Public Defender, respectfully files this Motion for Reduction of Sentence Pursuant to 18 U.S.C. § 3582(c)(2).

1. Mr. Brown was sentenced on September 12, 2001, to a term of imprisonment of 195 months for an offense involving cocaine base and for a count of 18 U.S.C. § 924(c). The sentence consisted of 135 months for possession with intent to distribute cocaine base (Criminal No. 00-121) to be followed by a 60 month consecutive sentence for a 924(c) charge (Criminal No. 01-101). The 135 months was at the lower end of the guideline range.

2. Subsequently, the United States Sentencing Commission amended §2D1.1 of the United States Sentencing Guidelines to decrease by two levels the offense levels

applicable to specific weights of cocaine base (the "Crack Amendment"). The Crack Amendment became effective on November 1, 2007.

3. On December 11, 2007, the Sentencing Commission determined that the Crack Amendment would be retroactive effective March 3, 2008.

4. On February 11, 2008, the Honorable Chief Judge Donetta Ambrose entered a standing order, appointing the Federal Public Defender for the Western District of Pennsylvania to represent any defendant sentenced in this District who might be eligible for a reduction of sentence pursuant to 18 U.S.C. § 3582(c)(2) based upon the retroactive application of the Crack Amendment.

5. Title 18, § 3582(c)(2) provides:

In the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. §994(o), upon motion of the defendant or the Director of the Bureau of Prisons, or on its own motion, the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

18 U.S.C. § 3582(c)(2).

6. Mr. Brown's sentence was imposed pursuant to the range as computed under the United States Sentencing Guidelines. His base offense level as computed under §2D1.1 of the Guidelines for a crack cocaine quantity of at least 150 grams but less than 500 grams of cocaine base was 34.

7. After retroactive application of the Crack Amendment, Mr. Brown's amended base offense level is 32. After a three point reduction for acceptance of responsibility, his amended final offense level is 29. With a Criminal History Category of III, Mr. Brown's amended guideline range for the cocaine base conviction is 108 to 135 months of imprisonment.

8. If the Court were to grant Mr. Brown's motion and give Mr. Brown a sentence at the mandatory minimum of the amended guideline range, he would receive a sentence of 120 months at Criminal No. 00-121, to be served concurrently and a term of 60 months at Criminal No. 01-101, to be served consecutively for a total sentence of 180 months.

9. Accordingly, Mr. Brown respectfully requests that his sentence be vacated and that he be re-sentenced to a term of imprisonment of 180 months.

10. The United States, through Assistant United States Attorney Michael Ivory, consents to the granting of this motion, but takes no position as to a new sentence to be imposed by the Court.

11. A proposed Order, in the form approved by the Administrative Office of the United States Courts, is attached.

WHEREFORE, it is respectfully requested that this Honorable Court grant the motion for reduction of sentence pursuant to Title 18, 3582(c)(2).

Respectfully submitted,

S\ Jay J. Finkelstein

Jay J. Finkelstein
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